

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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RECYCLING SERVICES CORPORATION :
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 Plaintiffs, :
 :
 - against - :
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 TOWN OF HAMDEN, CARL J. AMENTO, :
 THOMAS M. FORTUNA, SR., ANN :
 RAMSEY, ALBERTA MENDENHALL, :
 EDWARD L. BEAUDETTE, HARRY :
 GAGLIARDI, CAROL L. NOBLE, :
 HENRY CANDINO, and JOHN P. :
 FLANAGAN :
 :
 Defendants. :
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ORDER

3:00 CV 2441(GLG)

The defendants have moved to dismiss this Complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief may be granted. [Doc. # 9].

The following facts are not in dispute or are stipulated. Plaintiff is a hauler and disposer of trash, rubbish, refuse and recycles waste materials. The defendants are the Town of Hamden, its Mayor and the member of the Hamden Town Council.

On or about September 8, 2000, the Town of Hamden issued an Invitation to Bid ¹ on a proposed contract for weekly pickup and disposal of recyclables and leaves in Hamden, which contract was

¹ The Town Charter § 36.12 provided that a contract for more than \$2000 for services to be provided to the Town shall be submitted to competitive bidding.

to run from November, 2000 to June, 2001.²

The subject Invitation to Bid contained the following language:

The Town of Hamden reserves the right to accept or reject any or all options, bids, or proposals; to waive any technicality in a bid or part thereof submitted, and to accept the bid deemed to be in the best interest of the Town of Hamden.

The plaintiff submitted the lowest bid for this contract. On or about October 26, 2000, the Town of Hamden issued written notice, sent to plaintiff via certified mail, that the Invitation to Bid was cancelled.

The contract which was envisioned by the Invitation to Bid was not awarded to plaintiff or to any other bidder.

The defendants, on an emergency basis,³ extended for four

² This was the period remaining on a contract previously awarded to another contractor, which had defaulted and was now in bankruptcy.

³ The Town Charter § 36.13 provides for a waiver of the competitive bid process in emergency situations. According to a letter from the Mayor to Members of the Town Council (attached to Plaintiff's Complaint), the "emergency" occasioning this action was the default of an earlier contractor, which was now in bankruptcy. This contractor had posted a performance bond for the payment of any additional expenses, such as higher recycling fees, attorney's fees, etc., caused by the contractor's default. The performance bond also gave the bonding company the option of tendering to the Town a substitute vendor to perform the recycling pick-up. The company tendered was a "relative" of the debtor and one with which the Town had concerns as to its ability to perform satisfactorily. While the Town had not rejected the tendered contractor, it was conferring with other towns similarly affected by the debtor's bankruptcy to try to coordinate a response. The tender of the substitute contractor came after the Town had conducted a competitive bid for the remainder of the

weeks an existing contract of another bidder for recycling pick-up, with the addition of leaf pick-up for an additional fee.

On the basis of the foregoing, the plaintiff filed suit in State Court, setting forth nine causes of action.⁴ The case was then removed to Federal Court pursuant to 28 U.S.C. § 1441 and § 1446. The first count is brought under 42 U.S.C. § 1983 and claims a deprivation of plaintiff's property interests. The second count, also brought under § 1983, claims that the extension of the contract for leaf pick-up violated plaintiff's procedural due process rights. The third count, also brought under § 1983, maintains that the foregoing violated plaintiff's constitutional right to substantive due process. The first fourth count claims that the foregoing actions of the defendants amounted to a conspiracy in violation of 42 U.S.C. § 1985. There then follow four common-law or state-law causes of action.

LEGAL STANDARDS

A motion to dismiss filed pursuant to Rule 12(b)(6), Fed. R. Civ. P., tests only the sufficiency of the complaint and should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim that would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46

contract term. The results of the bid were much higher than expected. Thus, it appears that the Town was looking for a short-term solution until matters could be resolved with the performance bond company.

⁴ Two counts of the complaint are numbered "Fourth".

(1957). The issue is not whether the plaintiff will prevail but whether it is entitled to offer evidence in support of its claim. Villager Pond, Inc. v. Darien, 56 F.3d 375, 378 (2d Cir. 1995), cert. denied, 519 U.S. 808 (1996). In ruling on a motion to dismiss, we accept as true all allegations of the complaint, and draw all reasonable inferences in favor of the plaintiff. Still v. DeBuono, 101 F.3d 888, 891 (2d Cir. 1996).

FEDERAL CONSTITUTIONAL CLAIMS

Plaintiff contends that this case presents "a novel situation." (Pl.'s Mem. at 25.) It may. However, the first four causes of action are not viable unless the plaintiff asserts a constitutionally protected property interest. "A bid, even the lowest responsible one, submitted in response to an invitation for bids is only an offer which, until accepted by the municipality, does not give rise to a contract between the parties." John J. Brennan Construction Corp. v. City of Shelton, 187 Conn. 695, 702 (1982) (internal citations omitted).

"No contractual relation arises from the submission of a bid, even if such bid is the lowest submitted; a bid is no more than an offer which, until accepted, does not bind the offeree".

Joseph Rugo, Inc. v. Henson, 190 F. Supp. 281 (D. Conn. 1960); see also Connecticut Associated Builders & Contractors v. City of Hartford, 251 Conn. 169, 178 (1999). Only when a bid has been accepted does a contract arise, and a property interest accrue.

Ardmare Construction Co. v. Freedman, 191 Conn. 497, 502 (1983).

Furthermore, even if a contract does exist, it does not necessarily rise to the level of a constitutionally protected property interest. Martz v. Incorporated Village of Valley Stream, 22 F.3d 26 (2d Cir. 1994).

In S & D Maintenance Co. v. Goldin, 844 F.2d 962, 963 (2d Cir. 1988), the court considered the "circumstances under which a governmental contract may be said to create a property interest protected by procedural due process." After noting that the Supreme Court had enlarged the scope of the interests protected by the Fourteenth Amendment over the last twenty years, the court reiterated the current test: "'To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must instead, have a legitimate claim of entitlement to it.'" Id. at 965-66 (quoting Board of Regents v. Roth, 408 U.S. 564, 577 (1972)). In S & D, a company which had contracted to maintain New York City's parking meters, was held not to have a constitutionally protected property interest by virtue of its contract, and the city's breach of that contract could not be challenged as a violation of the company's Fourteenth Amendment rights. Similarly, the majority of jurisdictions have held that a disappointed bidder on a state or municipal contract has no right to sue in federal court on the ground of a deprivation of a property or liberty interest in violation of the Fourteenth Amendment. See, e.g., Curtis

Ambulance of Florida, Inc. v. Board of County Commissioners, 811 F.2d 1371, 1376-78 (10th Cir. 1987); Sowell's Meats & Serv., Inc. v. McSwain, 788 F.2d 226 (4th Cir. 1986); Coyne-Delany Co. v. Capital Dev. Bd., 616 F.2d 341 (7th Cir. 1980); Kasom v. Sterling Heights, 600 F. Supp. 1555 (E.D. Mich. 1985), aff'd without opinion, 785 F.2d 308 (6th Cir. 1986).

In this case, the plaintiff, a disappointed bidder, has not alleged deprivation of a property interest cognizable under the Fourteenth Amendment. Plaintiff simply has no federal constitutional right to the relief sought in this action.

In that regard, we note that the action seeks solely money damages, but under Connecticut law, in an action by an unsuccessful bidder to a municipal services contract alleging fraud or collusion in the bidding process, the only relief available is injunctive relief. See Lawrence Brunoli, Inc. v. Town of Branford, 247 Conn. 407, 411 (1999). Injunctive relief would be purposeless here since the subject contract was never awarded.⁵

The complaint also contains five causes of action based on state law, common law, and violations of town ordinances. This case is in its early stages and what is left belongs in State Court since the federal claims have been dismissed and only

⁵ The period of the contract has expired and the leaf collection portion had already been performed before the action was removed to this Court.

state-law claims remain. See Carnegie-Mellon University v. Cohill, 484 U.S. 343, 357 (1988). As that case holds, the District Court has discretion to remand a removed case (as this was) which also involves pendent state claims to the State Court from which it was removed. See 28 U.S.C. § 1447c

The Motion to Dismiss [**Doc #9**] is therefore **GRANTED** as to the four federal counts, Counts One, Two and Three and the first Fourth Count. The remainder of the action is remanded to Connecticut State Court.

SO ORDERED.

Dated: July 13, 2001
Waterbury, Connecticut.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge